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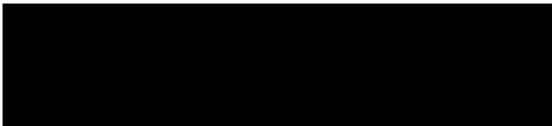
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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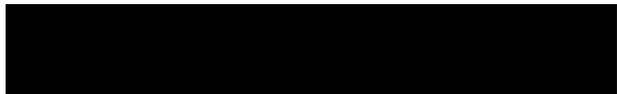
DATE: JUL 19 2011

OFFICE: LOS ANGELES

FILE:



IN RE: Applicant:



APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Los Angeles office terminated the temporary resident status of the applicant, pursuant to the terms of the CSS/Newman Settlement Agreements, finding the applicant to be ineligible for temporary resident status. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). The director terminated the application, finding the applicant failed to establish that he resided in a continuous unlawful status in the United States throughout the requisite period. Specifically, the director determined that record contained several inconsistencies in the applicant's own testimonies regarding his absences from the United States.

On appeal, counsel asserts that even with the inconsistencies, the applicant met his burden of proof by a preponderance of the evidence. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10. The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

In the Notice of Termination, dated June 15, 2010, the director stated that the applicant established his presence in the United States prior to June 1984 and after November 1985. The issue in this proceeding is whether the applicant established he has continuously resided in the United States in an unlawful status from June 1984 through November 1985.

In his Form I-687, at Question 32, where asked to list all absences from the United States since entry, the applicant listed an absence from the United States to Mexico to get married from May 1984 to May 1984. The applicant indicates that his next absence from the United States to Mexico is in November 1986. The applicant’s absence in 1984 is inconsistent with the applicant’s marriage certificate in the record. The marriage certificate states that the applicant was married in Mexico on September 17, 1984. This inconsistency raises questions regarding the applicant’s claim of continuous residence in the United States during requisite period.

The record contains additional inconsistencies among the applicant’s statements. In the applicant’s Record of Sworn Statement in Affidavit Form, dated November 14, 2006, the applicant stated that he first departed the United States to Mexico in September 1984 and returned in the same month of September 1984. The record also reflects that the applicant was interviewed on July 16, 2009. The record reflects that the applicant stated that he left the United States one month before his wedding day in 1984 (approximately August 1984), he remained in Mexico until his first child was four months old, and his whole family returned to United States in 1985. The applicant’s July 2009 testimony creates further contradictions that cast serious

doubt on the credibility of his claim of continuous residence during the time period in question. Based on the above, the director determined that the applicant failed to establish continuous residence in the United States from between August 1984 and November/December 1985.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). On appeal, counsel asserts that the inconsistencies in the applicant's statements were due to the fact that the applicant simply did not remember the information he was questioned about and does not have a fluent understanding of the English language. Counsel contends that the single most important document U.S. Citizenship and Immigration Services should consider is the applicant's sworn statement taken on November 14, 2006, at the Los Angeles Field Office in the presence of his attorney. As stated above, counsel's attempt to explain the inconsistencies in the record does not suffice without competent, objective evidence point to where the truth lies. Counsel provided copies of previously submitted evidence. No new evidence was submitted.

The previously submitted documentation consists of declarations from three individuals claiming to know the applicant during the requisite period, a church letter and an employment letter. The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The declaration from [REDACTED] indicates that the applicant worked for the Malibu Inn from July 1983 to May 1984. The declarant states that the applicant departed the United States in September 1984 and returned not long after October 1984. This declaration is inconsistent with all of the above applicant's testimonies. In his three different statements, the applicant stated that he returned to the United States in May 1984, September 1984 or 1985. Given this discrepancy, the declaration fails to provide minimal probative value in support of the applicant's claim.

The declaration from [REDACTED] indicates that the applicant resided with him from October 1982 through September 1985 and states the applicant's addresses of residence during the time addressed. The declaration from [REDACTED] indicates that she has known the applicant since 1985 and that he resided in the United States continuously since that time. The declarations fail to provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness statements must do more than simply state that a declarant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

The church letter from ██████████ indicates that the applicant was an active member of the parish from October 1984 to 1990. The declaration does not conform to regulatory standards for letters from organizations as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The declaration fails to state the address where the applicant resided during membership period, establish how the author knows the applicant, and establish the origin of the information being attested to. Lacking relevant details, the declaration provides minimal probative value as evidence in support of the applicant claim.

The employment letter from ██████████ indicates that the applicant worked part-time for the Velvet Turtle as a busboy from 1982 -1984 and from 1985 – 1989. This letter is consistent with the applicant's Form I-687 in which he stated he worked for the restaurant from March 1982 to November 1984 and from November 1985 to May 1989. However, the declaration fails to provide probative value as to the applicant's presence in the United States during the time period at issue in this decision. In addition, the declaration does not conform to regulatory standards for letters from employers as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The declaration fails to provide the applicant's address at the time of employment, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

Upon review, the AAO finds that, individually and together, the declarations do not indicate that their assertions are probably true. Therefore, they have minimal probative value and will be given little weight as evidence in support of the applicant's claim of continuous residence in the United States during the requisite period.

Based upon the foregoing, the evidence submitted in support of the applicant's claim has been found to have minimal probative value as evidence of the applicant's continuous residence and presence in the United States for the requisite period. The applicant's own testimonies are inconsistent and were not sufficiently reconciled on appeal. Given this, the applicant has failed to establish by a preponderance of the evidence that he continuously resided in an unlawful status in the United States from before January 1, 1982 through the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Beyond the decision of the director, the record reflects that on March 26, 1998, the applicant was convicted on one count of *driving under influence of alcohol or drugs*, a misdemeanor, in violation of section 23152(a) of the Vehicle Code of California (VC) in the Municipal Court of Metropolitan Courthouse Judicial District, Los Angeles, California (Cause No. ██████████). The applicant was fined, and sentenced to 36 months of summary probation and 48 hours imprisonment in the Los Angeles County Jail.

The record reflects that on July 15, 2005, the applicant was charged with *driving under influence of alcohol or drugs*, a misdemeanor, in violation of section 23152(a) of the VC and *driving with*

more than .08 % blood alcohol in violation of section 23152(b) of the VC. On August 24, 2005, the applicant was convicted of the latter offense in the Superior Court of California, Los Angeles, California, fined, sentenced to 60 months of summary probation and 5 days imprisonment in the Los Angeles County Jail. (Cause No. [REDACTED]) Two misdemeanor convictions do not render the applicant ineligible pursuant to 8 C.F.R. § 245a.2(c)(1).

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated November 6, 1998. The Form I-213 indicates that on November 6, 1998, the applicant applied for admission into the United States by claiming to be a citizen of the United States. The applicant was found inadmissible to the United States pursuant to sections 212(a)(6)(C)(ii) and 212(a)(7)(A)(i)(I) of the Act. The applicant was served with a Form I-860, Notice and Order of Expedited Removal, and summarily removed.

The record contains a second Form I-213 indicating that on November 7, 1998, the applicant applied for admission into the United States by presenting a valid I-551 belonging to another individual. The applicant was found inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act. The applicant was served with a Form I-860, Notice and Order of Expedited Removal.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.